

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DOÑA ANA MUTUAL DOMESTIC
WATER ASSOCIATION,

Plaintiff,

v.

CIV 02-0122 RB/KBM

CITY OF LAS CRUCES,
NEW MEXICO,

Defendant.

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

This matter is before the Court on two pending motions referred to me for recommended disposition (*Doc.68*). Having considered the arguments, pleadings and relevant law, I find Defendant's Motion to Dismiss Plaintiff's Motion to Enforce Settlement Agreement (*Doc. 62*) to be without merit.

In that motion, Defendant raises asserted procedural bars to the Court's consideration of Plaintiff's motion. Defendant contends that the parties have not met their obligations to mediate all of the issues raised in Plaintiff's Motion to Enforce before seeking judicial involvement. However, as required by the terms of the agreement, the parties have already engaged in over fourteen hours of mediation before Attorney Joel Newton, albeit addressing the issues in the context of the Sandhill and Legends West developments rather than as a global assessment of the issues. Also, I am unpersuaded that Plaintiff has failed to properly invoke the Court's jurisdiction by filing the motion rather than a new "pleading" seeking declaratory judgment relief. Therefore,

I will recommend that Defendant's motion be denied.

Because Defendant has yet to be heard in opposition as to the merits Plaintiff's Motion to Enforce the Settlement Agreement, I will set a schedule to complete briefing on the motion and hold the hearing shortly thereafter. Therefore, I will recommend that a ruling be held in abeyance pending completion of the briefing, the hearing and issuance of my proposed findings and recommended disposition.

Finally, at the hearing held today the parties agreed to one last day-long session of good faith mediation before me. I have scheduled that session for Friday, June 24, 2005.

Wherefore,

IT IS HEREBY RECOMMENDED that Defendant's Motion to Dismiss Plaintiff's Motion to Enforce Settlement Agreement (*Doc. 62*) be **denied**.

IT IS FURTHER RECOMMENDED that a ruling on the merits Plaintiff's Motion to Enforce Settlement Agreement (*Doc. 60*) be held in abeyance pending completion of further briefing, a hearing before me, and issuance of my proposed findings and recommended disposition.

IT IS ORDERED that Defendant file its Supplemental Response Brief by June 8, 2005 and Plaintiff file its Supplemental Reply Brief by June 20, 2005. A hearing on the motion will be held on Friday, July 15, 2005 at 9:00 a.m. at the United States Courthouse, 200 E. Griggs, Third Floor, Courtroom Two, Las Cruces, New Mexico. Anyone seeking to appear telephonically is to contact my Administrative Assistant Dixie Johnson at 505-528-1480.

**THE PARTIES ARE FURTHER NOTIFIED THAT WITHIN 10 DAYS OF
SERVICE of a copy of these Proposed Findings and Recommended Disposition they may file**

written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636 (b)(1). **A party must file any objections with the Clerk of the District Court within the ten day period if that party wants to have appellate review of the proposed findings and recommended disposition. If no objections are filed, no appellate review will be allowed.**


Karen B. Molzen
UNITED STATES MAGISTRATE JUDGE